

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	
)	
Regulatory Treatment of)	
Mobile Services)	

**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA") respectfully submits its comments on the Further Notice of Proposed Rule Making ("*Further Notice*") in the above-captioned proceeding.¹ CTIA is a trade association whose members provide commercial mobile services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry. CTIA and its members have a direct and vital interest in the outcome of this proceeding.

¹ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, CC Docket No. 93-252, FCC 94-100, 9 FCC Rcd _____ (released May 20, 1994) ("Further Notice").

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CTIA strongly endorses the Commission's goal, mandated by the Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993,² to modify its existing mobile services rules to establish regulatory symmetry in the FCC's regulation of competing mobile services. In these comments, CTIA supports the Commission's proposals to amend the technical, operational, and licensing rules for both common carrier mobile services included in Part 22 of the Commission's Rules and the former private land mobile services that have been reclassified as "commercial mobile radio services" ("CMRS") by the *Second Report and Order*.³ However, in order to effectuate the Congressional mandate that "competitors in the mobile services marketplace are subject to comparable regulatory requirements and that inconsistencies in [the FCC's] regulation of substantially similar services are eliminated,"⁴ and as a matter of competitive necessity and in the interests of fairness, CTIA urges the Commission to extend to cellular and the other Part 22 services the regulatory flexibility to offer both private and CMRS

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) ("*Budget Act*").

³ *Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), *erratum*, Mimeo No. 92486 (released March 30, 1994) ("*Second Report and Order*").

⁴ *Further Notice*, at ¶ 2.

services utilizing the same authorized frequency that the proposed rules afford PCS licensees and providers of Private Mobile Radio Services. Finally, the *Further Notice* seeks comment on imposing a limit on the amount of spectrum that CMRS licensees may acquire in geographic markets. CTIA believes that the large amount of spectrum now available for CMRS use, and the competitive market structure for both narrowband and broadband CMRS services that the Commission has established in its PCS rulemaking proceedings,⁵ provide no basis for imposing a cap on the total amount of spectrum that an entity may use to provide CMRS.

Proposals to Amend the Technical, Operational, and Licensing Rules

CTIA supports the Commission's proposals to amend the technical, operational, and licensing rules for both common carrier mobile services included in Part 22 of the Commission's Rules and the former private land mobile services that have been reclassified as "commercial mobile radio services". Specifically, CTIA agrees that there is no need to continue emission restrictions in services where frequencies are licensed on an exclusive basis so long as licensees comply with requirements designed to guard against co-channel interference, adjacent channel interference, and similar problems. This is consistent with the new PCS rules, as well as

⁵ Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314.

the cellular flexibility rules, which afford licensees system design flexibility and do not restrict licensees to any particular modulation or channel access technology.⁶

With respect to licensing rules and procedures,⁷ CTIA agrees with the Commission that applicants should indicate the service category in which the application is made, and whether the proposed service meets the three "prongs" of the statutory definition of CMRS, *i.e.*, whether the service will be (1) provided for profit, (2) interconnected to the public switched network, and (3) available to the public. Requiring applicants to provide specific information regarding their proposed services will help ensure accurate classification of mobile service applicants as either CMRS or PMRS, and should act as check against applicants attempting to misrepresent the proposed nature of their service. CTIA believes that the proposed rules also should permit persons to challenge a requested classification if the application indicates that the proposed service appears to be the functional equivalent of a CMRS service.

⁶ In an exception to the principle of regulatory parity, cellular carriers would still be required by the Commission's rules to provide analog service to customers with analog equipment. No similar obligation would be imposed on SMR and ESMR providers with an installed base of analog mobile units. See *Further Notice* at ¶ 55.

⁷ See *Further Notice*, at ¶¶ 111-112.

CTIA also supports the Commission's proposals that all CMRS applicants in Part 90 services should be required to pay the \$230 common carrier application filing fee,⁸ and the same per-subscriber regulatory fee as other CMRS providers.⁹ The Congressional mandate to achieve regulatory symmetry dictates that all CMRS licensees should pay application filing fees and regulatory fees on the same basis.

The *Further Notice* seeks comment on harmonizing the Commission's existing procedures under Part 22 and Part 90 for construction and temporary operation by an applicant prior to the formal grant of a license.¹⁰ CTIA agrees with the Commission that the same rules for pre-grant construction and operation should apply to CMRS applicants under both Part 22 and Part 90. The Commission should adopt liberal pre-grant construction rules that permit CMRS licensees to commence construction at any time, provided that they comply with applicable environmental and aviation hazard rules. The Commission also should adopt rules that would enable licensees to initiate operation of their facilities on an accelerated basis. While the Commission correctly recognizes that CMRS applications in Part 90 must comply with the statutory

⁸ See *Further Notice*, at ¶ 115.

⁹ See *Further Notice*, at ¶ 116.

¹⁰ *Further Notice*, at ¶¶ 135-138.

requirements of Section 309(f) of the Communications Act, it should adopt rules that permit applicants to commence operation pursuant to a temporary authorization. A number of such proposals have been suggested to the Commission in CC Docket 93-2, Amendment of the Commission's Rules for the Domestic Public Fixed Radio Services.

Proposals to Combine PMRS and CMRS Operation

While the Commission's rules will permit PCS and PMRS providers to offer private and commercial services utilizing the same authorized frequency, the *Further Notice* does not extend that same flexibility to other CMRS providers.¹¹ The *Second Report and Order* states that "PCS licensees . . . offer[ing] both commercial and private services will be issued a single CMRS license, but may seek authority to dedicate a portion of their assigned spectrum to PMRS."¹² Similarly, the *Further Notice* proposes to permit combined PMRS and CMRS operation in Part 90 services where both commercial and private services are allowed. The Part 22 rules for cellular carriers provide, however, that "[t]ransmitters licensed for operation in services governed by this part may not be currently licensed or used for operation in

¹¹ See *Further Notice*, at ¶ 78 (Permissible Uses) and ¶¶ 147-148 (Combined PMRS and CMRS Operation).

¹² *Second Report and Order*, 9 FCC Rcd at 1459.

services governed by this part may not be currently licensed or used for non-common carrier communication purposes."¹³

This distinction has practical significance for cellular providers who will compete with the providers of other CMRS services. These provisions unnecessarily restrict the ability of cellular carriers to design arrangements that most completely respond to customer needs and demands. Moreover, cellular carriers, as common carrier CMRS providers, remain subject to other obligations, such as resale, that are not imposed on the private services supplied by PMRS service providers. This disparity can be resolved by affording equivalent flexibility to all competing mobile service providers.

To insure consistent regulatory treatment of similarly situated mobile services, the Commission explicitly should authorize all CMRS providers to offer private and commercial services utilizing the same authorized frequency. Providing all CMRS providers with the opportunity to dedicate spectrum to private use would remove the incentive for PCS and Part 90 service providers to exploit an unwarranted regulatory disparity in order to seek a substantial competitive advantage. Providing such an opportunity would be consistent with the Congressional

¹³ See 47 C.F.R. § 22.119 (1993).

intent and the Commission's efforts to insure consistent regulatory treatment of similarly situated mobile services.

Proposals to Impose a Cap on Aggregation of CMRS Spectrum

The *Further Notice* also seeks comment on proposals to impose a limit on the amount of spectrum CMRS licensees may acquire in a geographic market. CTIA believes that the large amount of spectrum now available for CMRS use, and the competitive market structure for both narrowband and broadband CMRS services that the Commission now has established in its PCS rulemaking proceedings, provide no basis for imposing a cap on the total amount of spectrum that an entity may use to provide CMRS.

CTIA consistently has urged the Commission to adopt eligibility restrictions that are not unduly restrictive, and has demonstrated to the Commission's apparent satisfaction that such restrictions are not required to prevent anticompetitive behavior.¹⁴ Rather, the Commission has stated that its decision to impose spectrum caps on PCS spectrum was based on its desire to promote new competition.¹⁵

¹⁴ See *Memorandum Opinion and Order*, GEN Docket No. 90-314, at ¶ 103.

¹⁵ *Id.*, (emphasis added).

With the exception of cellular and broadband PCS licenses,¹⁶ there is no shortage of spectrum licensing opportunities for multiple competitors. CTIA believes that where there are numerous licensees and licensing opportunities, there is no benefit in limiting opportunities for CMRS providers to obtain additional spectrum. On the other hand, a spectrum cap can impose a real burden to the available spectrum being utilized according to its highest economic use by preventing incumbent carriers from using additional spectrum to add value to their existing networks and customers. For these reasons, CTIA urges the Commission to defer any plans to impose a generic, CMRS-wide spectrum cap.

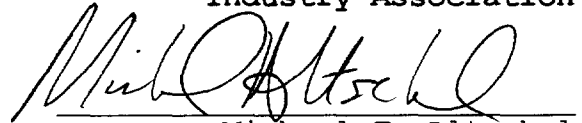
¹⁶ CTIA previously has voiced concerns about the need to include wide-area "ESMR" services in any spectrum cap. If ESMR spectrum is limited by market conditions, CTIA will address these concerns in its reply comments.

Conclusion

For these reasons, CTIA requests that the Commission adopt the recommendations set forth above.

Respectfully submitted,

**Cellular Telecommunications
Industry Association**

A handwritten signature in dark ink, appearing to read "Michael Altschul", is written over a horizontal line.

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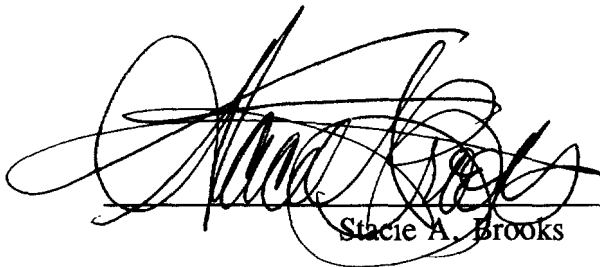
June 20, 1994

Certificate of Service

I, Stacie A. Brooks, hereby certify that on this 20th day of June, 1994, copies of the foregoing Comments of the Cellular Telecommunications Industry Association were served by hand delivery upon the following parties:

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